Lang Cartage Company *and* Teamsters Union Local No. 344, Sales and Service Industries, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 30-CA-6479

July 21, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

Upon a charge filed on May 4, 1981, by Teamsters Union Local No. 344, Sales and Service Industries, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, on behalf of itself and Chauffeurs, Teamsters, Warehousemen and Helpers Local 199, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and duly served on Lang Cartage Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 30, issued a complaint and notice of hearing on June 12, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent did not file an answer to the complaint.

On January 28, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment with exhibits attached. Subsequently, on February 3, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and therefore the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

In the instant case, the complaint and notice of hearing served on Respondent stated that unless an answer was filed by Respondent within 10 days of service thereof "all of the allegations in the complaint shall be deemed to be admitted by it to be true and may be so found by the Board." Further on August 13, 1981, counsel for the General Counsel mailed Respondent a letter in which she advised Respondent that it had failed to file an answer to the June 12 complaint and that, if an answer was not filed by August 20, 1981, she would file a Motion for Summary Judgment. Respondent filed no response.

Accordingly, under the rule set forth above, no good cause having been shown for Respondent's failure to file an answer, the allegations of the complaint are deemed to be admitted and are found to be true and we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Wisconsin corporation with offices and places of business in LaCrosse and Waukesha, Wisconsin, where it is engaged in the interstate and intrastate transportation of freight. During the calendar year ending December 31, 1980, Respondent, in the course and conduct of its freight operations, performed services in excess of $50,000 for other enterprises who are directly engaged in interstate commerce.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Teamsters Union Local No. 344, Sales and Service Industries, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act. Chauffeurs, Teamsters, Warehousemen and Helpers Local No. 199, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The complaint alleges that since August 8, 1963, and at all times material herein, Local No. 199 has been the certified collective-bargaining representative of employees of Respondent at its LaCrosse, Wisconsin, facility in a unit consisting of all truckdrivers employed at that facility, a unit which is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Such designation has been embodied in a collective-bargaining agreement which is effective by its terms for the period June 1, 1980, to May 30, 1982. The complaint further alleges that the Union by virtue of Section 9(a) of the Act has been, and is, the exclusive representative of the employees in the unit described above for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The complaint also alleges that since 1950, and at all times material herein, Local No. 344 has been the recognized collective-bargaining representative of employees of Respondent at its Waukesha, Wisconsin, facility in a unit consisting of all production workers, truckdrivers and helpers, and truck maintenance employees at that facility, a unit which is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Such designation has been embodied in a collective-bargaining agreement which is effective by its terms for the period June 1, 1980, to May 31, 1982. The complaint alleges that the Union by virtue of Section 9(a) of the Act has been, and is, the exclusive representative of the employees in the unit described above for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On March 28, 1981, Respondent closed its LaCrosse, Wisconsin, facility and on May 2, 1981, Respondent closed its Waukesha, Wisconsin, facility. The complaint alleges in substance that since the respective plant closings Respondent has failed and refused, and continues to fail and refuse, to bargain with the respective local union concerning the effects of the plant closings.

Accordingly, we find that Respondent, by the acts described above and by each of said acts, has engaged in, and is now engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, we shall order that it cease and desist therefrom, and from like or related conduct, and that it take certain affirmative action to effectuate the policies of the Act. We have found specifically that Respondent has violated Section 8(a)(1) and (5) by its failure to bargain about the effects of its closing of two of its plants.

As a result of Respondent's unlawful failure to bargain about such effects, the employees have been denied an opportunity to bargain through their contractual representative at a time when Respondent was still in need of their services, and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to each of the Unions. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require Respondent to bargain upon request with Local No. 344 concerning the effects of its decision to close its plant in Waukesha, Wisconsin. In addition, we deem it necessary, in order to effectuate the purposes of the Act, to require Respondent to bargain upon request with Local No. 199 concerning the effects of its decision to close its plant in LaCrosse, Wisconsin. We shall include in our Order a limited backpay requirement[1] designed both to make

[1] We have indicated that backpay orders are appropriate means of remedying 8(a)(5) violations of the type involved herein, even where such violations are unaccompanied by a discriminatory shutdown of operations. Cf. *Royal Plating and Polishing Co., Inc.*, 148 NLRB 545, 548 (1964), and cases cited therein.

whole the employees for losses, if any, suffered as a result of the violation and to recreate in some practicable manner a situation in which each of the Union's bargaining positions is not entirely devoid of economic consequences for Respondent. We shall do so in this case by requiring Respondent to pay backpay to its employees in a manner similar to that required in *Transmarine Navigation Corporation and its Subsidiary, International Terminals, Inc.*, 170 NLRB 389 (1968). Thus, Respondent shall pay employees backpay at the rate of their normal wages when last in Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date Respondent bargains to agreement with the respective Union on those subjects pertaining to the effects of the closing of its Waukesha, Wisconsin, facility or the closing of its LaCrosse, Wisconsin, facility on the respective unit employees; (2) a bona fide impasse in bargaining; (3) the respective Union's failure to request bargaining within 5 days of this Decision's issuance or to commence negotiations within 5 days of Respondent's notice of its desire to bargain with the Union; or (4) the respective Union's subsequent failure to bargain in good faith; but in no event shall such sums paid to any of these employees exceed the amount each would have earned as wages from May 2, 1981, or March 28, 1981, the respective dates on which Respondent closed its Waukesha and LaCrosse facilities, to the time they secured equivalent employment elsewhere, or the date on which Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed on a quarterly basis in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[2]

To further effectuate the policies of the Act, Respondent shall be required to establish a preferential hiring list of all laid-off unit employees at the Waukesha facility following the system of seniority provided for in the collective-bargaining agreement and, if Respondent ever resumes operations anywhere in the Waukesha, Wisconsin, area, it shall be required to offer these employees reinstatement. If, however, Respondent were to resume its Waukesha operation, Respondent shall be required to offer unit employees reinstatement to their former or substantially equivalent positions.[3] In addition, Respondent shall be required to establish a preferential hiring list of all laid-off unit employees at the LaCrosse facility following the system of seniority provided for in the collective-bargaining agreement and, if Respondent ever resumes operations anywhere in the LaCrosse, Wisconsin, area it shall be required to offer these employees reinstatement. If, however, Respondent were to resume its LaCrosse operation, Respondent shall be required to offer unit employees reinstatement to their former or substantially equivalent positions.[4]

CONCLUSIONS OF LAW

1. Respondent Lang Cartage Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Teamsters Union Local No. 344, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production workers, truckdrivers and helpers, and truck maintenance employees employed by Respondent at its Waukesha, Wisconsin, facility constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since 1950, the above-named labor organization has been and now is the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing and refusing on or about May 2, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain as described in section III, above, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

[2] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[3] *Drapery Manufacturing Co., Inc., and American White Goods Company*, 170 NLRB 1706 (1968).

[4] *Id.*

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

8. Chauffeurs, Teamsters, Warehousemen and Helpers Local 199, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

9. All truckdrivers employed by Respondent at its LaCrosse, Wisconsin, facility constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

10. Since August 8, 1963, the above-named labor organization has been and now is the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

11. By failing and refusing on or about March 28, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employes of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

12. By the aforesaid refusal to bargain as described in section III, above, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

13. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Lang Cartage Company, LaCrosse and Waukesha, Wisconsin, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain with Teamsters Union Local No. 344, Sales and Service Industries, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive collective-bargaining representative of all employees in the appropriate unit described below, concerning the effects on said employees of its decision to close its business operations at its Waukesha, Wisconsin, facility on May 2, 1981. The appropriate unit is:

> All production workers, truckdrivers and helpers, and truck maintenance employees employed by Respondent at its Waukesha, Wisconsin facility.

(b) Failing and refusing to bargain with Chauffeurs, Teamsters, Warehousemen and Helpers Local No. 199, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive collective-bargaining representative of all employees in the appropriate unit described below, concerning the effects on said employees of its decision to close its business operations at its LaCrosse, Wisconsin, facility on March 28, 1981. The appropriate unit is:

> All truckdrivers employed by Respondent at its LaCrosse, Wisconsin facility.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make whole production workers, truckdrivers and helpers, and truck maintenance employees employed by Respondent at its Waukesha, Wisconsin, facility by paying them their normal wages for the period set forth in this Decision and Order.

(b) Recognize and, upon request, bargain collectively with Teamsters Union Local No. 344, Sales and Service Industries, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the aforesaid employees, with respect to the effects on such employees of its decision to close its Waukesha facility, and reduce to writing any agreement reached as a result of such bargaining.

(c) Establish a preferential hiring list of all employees in the appropriate unit who were laid off on May 2, 1981, following the system of seniority provided for under the collective-bargaining agreement with Local 344 and, if operations are ever resumed in the Waukesha, Wisconsin area, offer reinstatement to those employees. If, however, Respondent resumes operations at the Waukesha facility, it shall offer all those in the appropriate unit reinstatement to their former or substantially equivalent positions.

(d) Make whole truckdrivers employed by Respondent at its LaCrosse, Wisconsin, facility by paying them their normal wages for the period set forth in this Decision and Order.

(e) Recognize and, upon request, bargain collectively with Chauffeurs, Teamsters, Warehousemen and Helpers Local No. 199, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the aforesaid employees, with respect to the effects on such employees of its decision to close its LaCrosse facility, and reduce to writing any agreement reached as a result of such bargaining.

(f) Establish a preferential hiring list of all employees in the appropriate unit who were laid off on March 28, 1981, following the system of seniority provided for under the collective-bargaining agreement with Local 199 and, if operations are ever resumed in the LaCrosse, Wisconsin, area, offer reinstatement to those employees. If, however, Respondent resumes operations at the LaCrosse facility, it shall offer all those in the appropriate unit reinstatement to their former or substantially equivalent positions.

(g) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Mail an exact copy of the attached notice marked "Appendix A"[5] to Teamsters Union Local No. 344, Sales and Service Industries, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and to all production workers, truckdrivers and helpers, and truck maintenance employees employed by Respondent at its Waukesha, Wisconsin, facility immediately prior to Respondent's cessation of operations at that facility on May 2, 1981. Post at such facility, or any other facility to which it has subsequently moved, copies of the attached notice marked "Appendix A." Copies of said notice on forms provided by the Regional Director for Region 30, after being duly signed by its authorized representative, shall be mailed immediately upon receipt thereof, as herein directed.

(i) Mail an exact copy of the attached notice marked "Appendix B"[6] to Chauffeurs, Teamsters, Warehousemen and Helpers Local No. 199, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and to all truckdrivers employed by Respondent at its LaCrosse, Wisconsin, facility immediately prior to Respondent's cessation of operations at that facility on March 28, 1981. Post at such facility, or any other facility to which it has subsequently moved, copies of the attached notice marked "Appendix B." Copies of said notice on forms provided by the Regional Director for Region 30, after being duly signed by its authorized representative, shall be mailed immediately upon receipt thereof, as herein directed.

(j) Notify the Regional Director for Region 30, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT fail and refuse to bargain with Teamsters Union Local No. 344, Sales and Service Industries, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of our employees in the appropriate unit described below concerning the effects of our decision to close our business operations on all production workers, truckdrivers and helpers, and truck maintenance employees, employed at our Waukesha, Wisconsin facility. The appropriate unit is:

All production workers, truckdrivers and helpers, and truck maintenance employees employed by us at our Waukesha, Wisconsin facility.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain collectively with Teamsters Union Local No. 344, Sales and Service Industries, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with respect to the effects of our decision to terminate our business operations on all pro-

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[6] See fn. 5, *supra*.

duction workers, truckdrivers and helpers, and truck maintenance employees employed at our Waukesha, Wisconsin, facility, and reduce to writing any agreement reached as a result of such bargaining.

WE WILL make whole all production workers, truckdrivers and helpers, and truck maintenance employees employed at our Waukesha, Wisconsin, facility for any loss of pay they may have suffered as a result of our failure to bargain about the effect of the closing of our facility in Waukesha, Wisconsin, for the period decided by the National Labor Relations Board, with interest.

LANG CARTAGE COMPANY

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT fail and refuse to bargain with Chauffeurs, Teamsters, Warehousemen and Helpers Local No. 199, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of our employees in the appropriate unit described below concerning the effects of our decision to close our business operations on all truckdrivers employed at our LaCrosse, Wisconsin, facility. The appropriate unit is:

All truckdrivers employed by us at our LaCrosse, Wisconsin facility:

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain collectively with Chauffeurs, Teamsters, Warehousemen and Helpers Local No. 199, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with respect to the effects of our decision to terminate our business operations on all truckdrivers employed at our LaCrosse, Wisconsin, facility, and reduce to writing any agreement reached as a result of such bargaining.

WE WILL make whole all truckdrivers employed at our LaCrosse, Wisconsin, facility for any loss of pay they may have suffered as a result of our failure to bargain about the effect of the closing of our facility in LaCrosse, Wisconsin, for the period decided by the National Labor Relations Board, with interest.

LANG CARTAGE COMPANY